

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1029 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTLAL LALLUBHAI RANA

Versus

GULABDAS KALYANDAS

Appearance:

MR HB SHAH for Petitioner

Mr. D.J.Bhatt for MR HG PATIL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. Present revision application has been filed by the original defendant against whom the the opponent plaintiff herein had filed a Regular Civil Suit No.150 of 1971 in the court of the learned Civil Judge (JD) Gandevi

. The case of the plaintiff in the said suit was that he is the owner of the suit property situated in the town of Billimora. That description of the property has been given in para 1 of the plaint. That he purchased the same from defendant and others under a registered sale deed dated 7.9.59 and he let out the suit premises to the defendant for the purpose of his residence at a monthly rent of Rs. 13. That without the written permission of the plaintiff, he has made certain electrical fittings. That the son of the defendant was residing with the defendant as member of his family and he gave a public notice dated 9.7.1971 denying the title of the plaintiff and that was given in collusion with the his father. The defendant did not pay the amount of rent due including the amount of education cess. Therefore, after the demand notice, suit for possession was filed by the plaintiff.

#. The defendant appeared in the suit and raised various contentions in the written statement exh.11. He denied the title of the plaintiff saying that the plaintiff is not the owner of the suit premises. It was contended by him that he is in possession of the suit premise as an owner and not as a tenant. It was further contended by him that Lallubhai Parshottambhai was his father and Karta of the joint Hindu Family. He was carrying on business of rice etc. and said Lallubhai in his capacity as manager and Karta purchased land bearing survey no. 464 admeasuring 2 vighas-7 Visas for Rs. 18000/-by way of registered sale deed and after the purchase, land admeasuring about 50 ft. abutting on the road was sold to one Ranchhodbhi Hargovandas by the said joint family. Over the said land construction was made at the cost of Rs. 85,000/-. Part of the land thereafter was leased to Fakirbhai Jinabhai and Co. and said joint family is the owner of survey number 464 of which the suit property is a part. Therefore, the property is in possession of the defendant as a co.owner. That Lallubhai took Rs.20,000/on 7.4.1945 for his business and he mortgaged the suit property and said transaction is not accepted by the defendant and that it does not affect the status of joint family. It is contended that Lallubhai accepted the plaintiff as well as one Shri Jashbhai Chhotabhai and other Shri Bhailalbai Gordhanbai as the partners in the said new Ashagadh business which was run in the name and is style of Rana Bros. and again, neither the said HUF nor any of its members had any connection or concern with the said business. Ultimately on 14.10.1946 his father Shri Lallubhai Parshottambhai expired. It is further contended that said sale deed exh.71 dated 9.1.1957 is a sham one. It is further contended that the plaintiff's

father Shri Kalyandas Vithaldas under extreme fraud, pressure and coercions etc. had mortgaged debt of Rs. 30,000/- from the heirs of deceased Lallubhai Parshottambhai. It is further contended that said Lallubhai was heavily indebted to the rest of the partners as well as other persons. and therefore, the plaintiff's father Shri Kalyandas Vithalbhai has obtained a decree in respect of both these mortgaged documents, which were not binding to them. It is contended that the plaintiff's father expired during about 1956, after whose death the plaintiff had met the defendant and his brother and has misrepresented that his deceased father Shri Lallubhai Parshottambhai was heavily indebted at Ashagadh and if the whole suit premises is not transferred in the name of the plaintiff, then the same will be sold out for the purpose of the satisfaction of the said debt through the court. It is further contended that said Lallubhai Parshottambhai was indebted heavily to the defendant but if the defendant and his brother pay Rs. 20,000/- to the plaintiff, then in that event the plaintiff would relieve them from all such debt and liabilities and moreover he will satisfy the mortgage decree by payment from the Ashagadh property of the partnership business. Initially the defendant did not accept this offer of the plaintiff but ultimately it was unanimously decided between the plaintiff and his brothers that the defendant to satisfy all the above stated mortgage decrees accordingly and a sham sale deed to be executed by the defendant and his brothers etc. in favour of the plaintiff without actual consideration of Rs.52,999/- and not to virtually act upon but just with a view to save the said HUF property from the said debts of deceased Lallubhai . It is further contended that in the circumstances it was agreed to pay Rs. 7000/- to the plaintiff by the defendant and his brothers which was actually paid by them to him. Accordingly, a sham document exh.71 dated 1.9.1957 was executed by the defendant, his brother. etc. It is contended that the value of the said property was worth Rs. 1,65,000/and that being so, the consideration amount of Rs. 52,999/of the said sale deed is grossly inadequate. The defendant also contended that sale deed exh.71 dated 1.9.1957 was executed as the plaintiff had misrepresented before him. It is further contended that the suit sale deed exh.71 is a sham document and the plaintiff never was and is the owner of the suit premises. On the contrary the defendant himself along with his brother etc. as heirs of the said deceased Lallubhai Parshottamdas are the owners of the said ancestral property and there had never any question of lease in the suit premises by the plaintiff to him. In

the circumstances there is no question of payment of any rent to the plaintiff. The defendant stated that since he is not to pay any rent there is no question of any arrears of rent.

#. After hearing the parties, the learned Trial Judge framed various issues at exh.15. The Trial Court came to the conclusion that there is relationship of landlord and tenant between the plaintiff and defendant and that the plaintiff has proved that the defendant is in arrears of rent and he is not ready to pay the rent.

#. It was also observed by the learned Trial Court that it has got jurisdiction to hear and decide the said suit. ultimately a decree for possession was passed by the Trial Court on the ground of arrears of rent. Said judgment and decree was challenged by the present petitioner by way of Regular Civil Appeal No.71 of 1980. Said appeal was heard by the learned Assistant Judge, who in turn dismissed the appeal by his judgment and decree dated 30.4.1983. Present revision application is filed against the aforesaid judgment and decree passed by the learned Appellate Judge.

#. I have heard Mr. H.B.Shah learned advocate for the petitioner. Considering the evidence on record as well as considering the reasoning of the learned Appellate Judge, I do not find any substance in the present revision application. So far as the question of title is concerned the learned Appellate Judge has considered the judgments given upto the High Court in the previous litigation. One Kanubhai who is the son of the present defendant had filed Reg.Civil Suit No.153 of 1972 in the Court of learned Civil Judge, (JD) for partition of the suit property and present plaintiff and defendant as well as rest of the members of the HUF of the defendant were joined as defendants in the said suit and the said suit was dismissed on 30.3.79. Copy of the judgment of the said is at exh.119. Appeal against the said judgment and decree was dismissed by the District Court and Second Appeal No.403 of 1980 filed against the said judgment and decree was also dismissed by the High Court. The plea of HUF was disbelieved in the proceedings and the suit was dismissed. Aforesaid contention was held to be barred by resjudicata by the learned Appellate Judge . Therefore, the reasoning is absolutely in consonance with the evidence on record. Thus it remains to be a suit between the landlord and tenant and therefore, the Rent Court was competent to decide the same under section 28 of the Bombay Rent Act.

#. There is absolutely no evidence to show that he has paid any amount of rent in response to the notice of demand. The learned Appellate Judge has found in para 21 of his judgment that from the voluminous documentary evidence on record, the plaintiff has proved that the defendant is a tenant in the suit premises at the monthly rent of Rs. 13/- and that he was in arrears of rent from 1.11.1957. It is not even the case of the defendant that he has paid any rent. Of course, the courts below have only decreed the suit for arrears of rent for the last 3 years which was within the period of limitation. However, looking to the evidence therefore, it cannot be said that the tenant was ready and willing to pay the rent. The tenant has not raised any dispute regarding standard rent within one month of the suit notice. The case would therefore, clearly fall under section 12(3)(a) of the Bombay Rent Act and in view of the decision of the Supreme Court reported in 31(1) GLR 209, there is no escape from the decree under section 12(3)(a) of the Bombay Rent Act. Even assuming that the case would fall under section 12(3)(b) of the Bombay Rent Act, then also there is no regular deposit of the amount of rent every month in the court as observed by the Trial Court. I therefore, see no infirmity or illegality in the decisions arrived at by both the courts below. In the circumstances, the Revision Application deserves to be dismissed and the same is accordingly dismissed.

Rule is discharged with no order as to costs.

At this stage Mr. H.B.Shah learned advocate for the petitioner has requested that some time may be granted for vacating the suit premises. Looking to the fact that the petitioners are occupying the premises since long, in the interest of justice I grant 6 months' time for vacating the suit premises. The decree for possession shall not be enforced till 31.7.2000.

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